



U.S. Citizenship
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C/ MAR 07 2005

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 122 53068

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a Christian book editor. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

On appeal, the petitioner submits samples of published materials, letters from members of the clergy, and arguments from counsel.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The sole issue in the director's decision is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following definition:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Rev. Dr. Magdy Girges, pastor of the petitioning church, describes the beneficiary's work:

The church has a wide publishing program that includes Christian Books, magazines for Arabic-speaking people in general, and Christian education of the church. . . .

Previously, [the beneficiary] was employed by the Arabic Communication Center working as a Christian book editor, translator, and writer. He also develops material for Christian radio broadcast, etc. . . .

As Christian book editor at [the petitioning] Church, [the beneficiary] will be providing an important function for the church. He will, among other things, write and edit religious articles addressing Christian precepts for the "Pasadena Life," a monthly Christian periodical publication and write as well as assign others to write Christian stories and commentary. [The beneficiary] will also develop, write and edit script material for Christian Television Broadcasts, live lectures, and special events.

The director instructed the petitioner to submit "a detailed description of the . . . specific job duties." In response, [redacted] essentially repeats the earlier description, adding, "[w]e require an individual with an academic degree [in] artistic criticism [and] experience in writing and directing Christian drama." In a separate letter, [redacted] lists the beneficiary's "weekly duties":

- 1 - Writing and editing religious articles addressing Christian precepts for the "Pasadena Life," a monthly Christian periodical.
- 2 - Writing and directing religious plays.
- 3 - Publishing and editing a monthly newspaper including Christian preception [sic] called "El Mohager."
- 4 - Writing Christian articles for community newspapers.
- 5 - Cartoonist and illustrator for the "Pasadena Life" a monthly Christian periodical and for "El Mohager" a monthly periodical, and other community newspaper[s].
- 6 - Writing, editing, and hosting shows in the TV broadcasts
- 7 - Deliver lectures and special events [sic].
- 8 - Reading, selecting, and prepar[ing] material for publication as well as assigning others to write Christian stories and commentaries.

The director denied the petition, stating that the beneficiary's job "is considered a wholly secular position and not qualifying as a religious occupation," but offered no explanation for this finding. The director simply quoted regulations and stated some general principles, followed by the conclusion that the beneficiary's position is "wholly secular."

On appeal, counsel argues that the materials prepared and presented by the beneficiary are entirely religious in nature, and that there is no fundamental difference between a lay preacher presenting religious material from a pulpit, and an editor/author publishing such material in written form. Several pastors offer letters of support, asserting that the publication of original religious material is integral to the church.¹ We agree with this reasoning. The beneficiary is not merely a proofreader or layout editor, responsible only for the "look" of the published materials, nor is he a printer or binder who just happens to work with religious materials. Rather, the beneficiary is responsible for the actual content of the religious publications. The creation of religious content in this manner can be a qualifying religious occupation, as shown by the inclusion of

¹ The significance and weight given to letters from the clergy varies according to the facts and circumstances of each proceeding. Here, the letters serve to reinforce a conclusion that already arises from other materials in the record.

religious broadcasters in the list of such occupations at 8 C.F.R. § 204.5(m)(2). Here, the beneficiary is not merely a freelance writer, commissioned to write an article for a church or a religious periodical; rather, he is a paid, full-time member of the petitioner's staff. Work with religious materials is, therefore, not an incidental facet of the beneficiary's work, but rather its primary, perhaps exclusive, focus.

We do not, however, agree with counsel's contention that the prior approval of R-1 nonimmigrant religious worker petitions filed on the beneficiary's behalf "should estop the Service from challenging the bonafides of the [beneficiary's] Religious WORKER Qualifications" (counsel's capitalization). The approval of an R-1 nonimmigrant petition does not compel a presumption of eligibility for special immigrant religious worker status. Furthermore, with regard to the principle of estoppel, *In Re Phat Dinh Truong*, 22 I&N Dec. 1090 (BIA 1999), contains the following discussion of estoppel at 1092:

While the Supreme Court has not yet decided definitively whether estoppel may ever lie against the Government, it has noted that it has reversed every lower court finding of estoppel against the Government that has come before it. See *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); see also *INS v. Miranda*, 459 U.S. 14 (1982) (per curiam); *INS v. Hibi*, 414 U.S. 5 (1973) (per curiam). The United States Court of Appeals for the Ninth Circuit has indicated that estoppel against the Government could be possible, but has cautioned that any party asserting it carries a "heavy burden," and that estoppel could lie only where there has been "affirmative misconduct" on the part of the Government. See *Santamaria-Ames v. INS*, 104 F.3d 1127 (9th Cir. 1996); *United States v. Ulyses-Salazar*, 28 F.3d 932 (9th Cir. 1994); *Santiago v. INS*, 526 F.2d 488 (9th Cir. 1975) (en banc), cert. denied, 425 U.S. 971 (1976).

Furthermore, estoppel is a judicial rather than an administrative remedy, and thus proper jurisdiction for estoppel questions lies with the courts. Even then, in the instant proceeding, as we have noted, there has been no judicial finding of affirmative misconduct, which is the only grounds by which estoppel may conceivably apply to the government.

Therefore, we emphasize that the reversal of the director's decision does not, in any way, rest on counsel's argument that the prior approval of an R-1 nonimmigrant petition estops Citizenship and Immigration Services from denying a subsequent immigrant petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.